

Douglas J. Melton, Bar No. 161353
Shane M. Cahill, Bar. No. 227972
LONG & LEVIT LLP
465 California Street, 5th Floor
San Francisco, California 94104
Telephone: (415) 397-2222
E-mail: dmelton@longlevit.com
scahill@longlevit.com

Attorneys for Defendant
SFBSC Management, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JANE ROE, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

SFBSC MANAGEMENT, LLC; and
DOES 1-200,

Defendants.

Case No. 3:14-cv-03616-LB

**DECLARATION OF MARK CALCAGNI
IN SUPPORT OF MOTION TO COMPEL
ARBITRATION RE PLAINTIFFS JANE
ROE 1 AND JANE ROE 2**

Date: February 5, 2015
Time: 9:30 a.m.
Place: Courtroom C, 15th Floor
Judge: Hon. Laurel Beeler

1 I, Mark Calcagni, declare:

2 1. I am the General Manager of the Condor Club—a dba of SAW Entertainment,
3 Ltd.—located at 560 Broadway Street in San Francisco (the “Condor”). I have personal
4 knowledge of all the facts stated in this declaration. I could and would competently testify to
5 these facts if called upon to do so in court.

6 2. I understand Jane Roe 1’s identity has been designated as “Confidential.” I have
7 reviewed the Stipulated Protective Order in this case and have signed the “Acknowledgment and
8 Agreement to Be Bound” attached thereto. I was then informed of the true identity of Jane Roe 1.

9 3. I am not employed by BSC Management (“BSC”). I understand BSC is a
10 management consulting company the Condor contracts with for management and administrative
11 services. I, like all the Condor’s employees, am employed by SAW Entertainment, Ltd.

12 4. During my employment with the Condor, entertainers who want to perform at the
13 club have been given the option of either employee or independent contractor status. The
14 differences between the two classifications are outlined in a form we give them entitled:

15 NOTICE TO ENTERTAINERS OFFER OF EMPLOYEE STATUS

16 STATEMENT OF IMPACT CHOICE OF CONTRACTOR STATUS.

17 5. The Offer of Employee Status form says that entertainers have the option of
18 performing either as employees or independent contractors and how their choice will affect their
19 relationship with the club. Entertainers who choose to perform as independent contracts
20 specifically decline employee status on the Offer of Employee Status form and sign a “Performer
21 Contract.”

22 6. I have never told prospective entertainers that they “had to sign” a Performer
23 Contract in order to perform at the Condor. The Offer of Employee Status form says that
24 “Entertainers have historically performed at this club as independent contractors who control if,
25 when, where, how and for whom they perform. However, if you wish to become an
26 ‘EMPLOYEE’ of this club, you may apply to do so.” This statement tells entertainers they do not
27 have to sign a Performer Contract to perform at the Condor.

28 7. In some older versions of the Performer Contract, entertainers could accept or

1 reject the arbitration provisions. As far as I know, it was never the policy at the Condor to
2 “force” entertainers to accept the arbitration language, to retaliate against entertainers who
3 rejected it, or pretend to lose entertainer contracts, or to make the entertainer fill out a new
4 Performer Contract and accept the arbitration provision, or to do anything like that.

5 8. I remember Jane Roe 1. I don’t remember Jane Roe 1 asking me questions about
6 the Performer Contract she signed in 2014 or about the arbitration language. If she had, I would
7 have tried to answer her questions or directed her to someone who could. Jane Roe 1 was free to
8 ask someone else about the Performer Contract. It had a section that said she should “Read and
9 consider it, seek the advice of counsel or a person you trust to assist you.”

10 9. The Condor management does not have a policy of making entertainers review
11 Performer Contracts only when they were “mostly naked.” Most new entertainers get their initial
12 set of entertainer documents (including the Performer Contract and Offer of Employee Status)
13 when they are wearing their street clothes. Sometimes entertainers review and sign renewal
14 Performer Contracts when they are at the club to perform. If they have chosen to change out of
15 their street clothes and into their costumes before they look at the Performer Contract, that is their
16 choice not ours. Entertainers are “mostly naked” most of the time when they are at the club since
17 they are there to perform. Management does not make a point of waiting until entertainers have
18 changed out of their street clothes before asking them to review a new Performer Contract.

19 10. To my knowledge, the Condor management never had a policy of rushing
20 entertainers to review Performer Contracts. We do not tell entertainers they can’t take a copy of
21 the Performer Contract home. In fact, as stated above, the contract itself advised entertainers to
22 “read and consider it, seek the advice of counsel or a person you trust to assist you.”

23 11. I am not aware of any entertainer ever being intoxicated from alcohol, or under the
24 influence of illegal drugs, at a time when she was being asked to review and sign a Performer
25 Contract. Entertainers are free to drink alcohol while performing at the Condor. However, we
26 expect entertainers to drink responsibly at the club and to not get drunk. If an entertainer were to
27 get drunk, we would not ask her to try to review a new Performer Contract. Also, the Condor has
28 a strict zero tolerance policy for illegal drugs on its premises and the Performer Contract specifies

1 that use of illegal drugs on premises by entertainers is a material breach of the contract.

2 I declare under penalty of perjury, under the laws of the United States of America, that the
3 foregoing is true and correct and that this declaration was signed at San Francisco, California, on
4 January 17, 2015.

5 
6 Mark Calcagni